

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

GALVESTON DIVISION

RADOSLAV DIMITRIC	§	
	§	
VS.	§	CIVIL ACTION NO. G-06-108
	§	
TEXAS WORKFORCE COMMISSION,	§	
ET AL.	§	

REPORT AND RECOMMENDATION

On February 22, 2006, Plaintiff, Radoslov Dimitric, filed a complaint with this Court against the Texas Workforce Commission and Texas A&M University at Galveston seeking review of the Commission's decision denying him unemployment benefits. The complaint was filed pursuant to the Texas Labor Code without payment of the civil filing fee. See Tex. Labor Code § 212.210

A Federal District Court must always examine the basis of its jurisdiction. Giannakos v. M/V Bravo Trader, 762 F.2d 1295, 1297 (5th Cir. 1985) The Eleventh Amendment prohibits suits for monetary relief by private parties in federal court against a state and its agencies, absent waiver by the state. Gay Student Services v. Texas A&M University, 737 F.2d 1317, 1333 n.27 (5th Cir. 1984) The Texas Labor Code does not waive the sovereign immunity of Texas, therefore, judicial review of a decision by the Texas Workforce Commission may only be brought in a Texas District Court. See Tex. Labor Code § 212.201 Since it appears that this Court lacks subject matter jurisdiction to consider Dimitric's complaint it is the **RECOMMENDATION** of this Court that his Complaint be **DISMISSED**.

The Clerk **SHALL** send copies of this Report and Recommendation to the Plaintiff. Plaintiff **SHALL** have until **March 24, 2006**, to file written objections to the Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(C). The Objections **SHALL** be mailed to the United States District Clerk, P.O. Drawer 2300, Galveston, Texas 77553. Any Objections filed **SHALL** be contained in a written document specifically entitled “Objections to the Report and Recommendation of the Magistrate Judge”, which will then be forwarded to the District Judge for consideration. Failure to file objections within the prescribed time shall bar an aggrieved party from attacking on appeal the factual findings and legal conclusions accepted by the District Judge, except upon grounds of plain error.

DONE at Galveston, Texas, this 27th day of February, 2006.



John R. Froeschner
United States Magistrate Judge